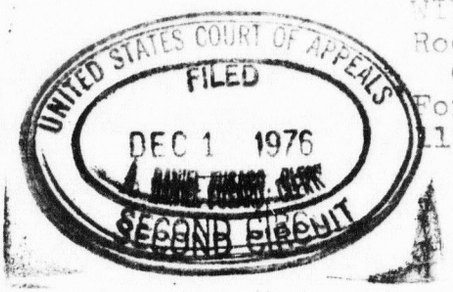
United States Court of Appeals

for the Second Circuit

APPELLANT'S PETITION FOR REHEARING EN BANC

76-6072

WILLIAM R. KLEIN
Room 51', 11821
Queens Blvd.,
Forest Hills, N.Y.
11375 268-6320



November 16,1976

To the United States Circuit Court of Appeals
Second Circuit :

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P/S

The Appellant pro se, encloses seven additional copies of his Petition for Rehearing by the Court en banc, as requested by the Clerk this day. ORAL HEARING IS REQUESTED.

Thanking you for your courtesy, I am

Yours very truly,

William R. Klein

WILLIAM R. KLEIN

k.t

PETITION FOR REHEARING EN BANC

County of Queens, State of New York::SS::

WILLIAM R. KLEIN, being duly sworn, deposes and says: That he is the within petitioner, that he avers that the said Petition has been read by him and that the same is true, except as to any matters therein stated as to be upon information and belief, and thatas to those matters he believes them to be true, that he so swore before on the 12th day of November, 1976, and now likewise Amendment to it.

Reswore to before me this
23rd day of November, 1976

William R. Klein

William R.Klein

NOTARY PUBLIC

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76-6072

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

In the Matter of

WILLIAM ROBERT KLEIN, a/k/a
WILLIAM R. KLEIN,

An Attorney

WILLIAM ROBERT KLEIN,

Appellant,

-against-

DAVID N. EDELSTEIN,
Chief Judge of the
United States District
Court, Southern District
of New York,

Respondent.

APPELLANT'S PETITION FOR RE-HEARING

WILLIAM R. KLEIN
Appellant pro se
118-21 Queens Boulevard
Forest Hills, New York 11375
(212) 268-6320

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------X

In the Matter of

WILLIAM ROBERT KLEIN, a/k/a
WILLIAM R. KLEIN,

An Attorney

WILLIAM ROBERT KLEIN,

Appellant,

- against -

DAVID N. EDELSTEIN, Chief Judge of the United States District Court, Southern District of New York,

Respondent.

----------X

APPELLANT'S PETITION FOR RE-HEARING PURSUANT TO STATUTORY LEAVE.

TO THE HONORABLE COURT:

The Petitioner, WILLIAM R. KLEIN, appellant herein, respectfully alleges and shows: (attaching hereto a copy of the Court's order and judgment of affirmance, without Opinion, dated October 28, 1976).

1. What is involved is the abrupt and automatic cancellation of Petitioner's membership of the Bar of the District Court of the Southern District below, after Petitioner's well-nigh 50 years of unblemished such membership, by the Chief Judge below,-by wholesale violation of the Constitutional safeguards, written into the governing General Court Rule, circumscribing the Chief Judge's

authority and power over the matter of the discipline of attorneys, where resting upon a State Court judgment.

2. What is involved is great Constitutional issues, the application of cruel and unusual punishment, and in the exercise of freedom of speech; the absence of due process, and the unequal application of the state laws, the latter two being virtually conceded by the respondent Chief Judge in his acknowledgment, with his Counsel, of the infirmities of the State's judgment predicate, and his disregard of the protections of District Court Rule 5(d), likewise standing undisputed by adversaries.

3. Petitioner, in his 79th year, had looked to this widely reputed Bench panel, in this human struggle, personified by this Petitioner in the substance of the appeal to this tribunal, whereon judicial independence was prerequisite in this most high of Tribunals, faced with a historic issue of a lower Chief Judge's indifference to Rule, and abdication of his heavily endowed Office, (vested with a wholesale authority for discipline of his Court's Bar, under said, critical, General Court Rule 5(d), controlling below, and here.

4. Petitioner suffered loss of State grant to practice law, solely as a judicial response to his dutiful invokement of Article 7 a, of the New York State Judiciary Law, and the underlying Section No. 1 of the Lawyer's Professional Code of Ethics, calling for Judicial Inquiry of a State Court Trial Judge, for his overnight, abrupt self-reversal of an interlocutory award, to this

appellant's clients, of an equivalent one and one-half million dollars. As to this, the record stands undisputed.

5. The retaliatory loss of license was an equally abrupt process. For the first time since the year 1735, as New York legal history seems to disclose, a forfeiture of lawyer's license was effected, without essential notice of charge, and without prior hearings or trial had, on any charge. That loss was by decree entered June 29, 1965, in the Appellate Division of the Supreme Court of the State of New York, Second Department.

6. To all this, neither the Chief Judge-Respondent took exception, nor did his latterly retained member of the Department of Justice of the United States; on the contrary, both the Chief Judge, and the Justice representative, made broad acknowledgment of the basic constitutional infirmities, attaching to the state judgment, recited by the Chief Judge as the sole exclusive predicate of his abrupt order, automatic in nature, of Federal license cancellation, dated September 25, 1974.

7. If this Petition repeats, it is for the incredible, facts.

8. Petitioner's call upon the duly constituted authorities of the State, to make authorized inquiry of the said Trial Judge's conduct at Court, was, and also, an exercise of his constitutional right of free speech in criticism of a public official, enabling himself to achieve immunity therefrom by corralling his state judicial confreres, to put a quietus upon Petitioner in his profession. Thus stands the record in the State Court to this

day, except that the said judgment of disbarment, ori ginally recited as based on some nine findings of guilt, now stands entirely obsolete of that group, and without even that foundation -- itself also a constitutional denial of due process.

9. All this was before the Chief Judge-Respondent, after his abrupt order of cancellation of the Petitioner's membership in the Court below; but he also learnt that the coordinate Chief Judge of the Eastern District, Hon. JOSEPH C. ZAVATT, immediately after the state disbarment order's entry in 1965, was called upon, through the local Appellate Division, to cancel Petitioner's Federal membership there, by a prosecution proceeding based also thereon. Unlike the Chief Judge-Respondent here, he ordered the local United States Attorney, Hon. JOSEPH P. HOEY (1965, September) to make full investigation of all of the State Courts' proceedings, prior and subsequent to said judgment, in the presence of Petitioner's unprecedented claims, that said state judgment was preceded by no essential Notice, and no prior hearings on any charge.

10. That ordered Investigation consumed three years; and at the end, the United States' Attorney, priding himself, openly, as being a representative of a "Department of Justice", filed his report to the Chief Judge, as originally ordered to do; that Report, dated September 9, 1968 deemed the state court judgment, a constitutional nullity, and held, that no later proceedings by the State, short of the immediate vacature of said judgment as a first and prior act of the courts, in the State (promptly applied for and denied), could validate or serve to bolster that judgment, void ab initio. (USDC-EDNY No. 65 M 811).

11. The present United States Attorney, called in to defend the Chief Judge here, on appeal, obviously felt challenged by his Eastern District predecessor's lofty example, in the record; and by the factious, 15-month private investigation, conducted by his client, (September 1974 to January 16, 1976), in his Office as Chief Judge; neither disclosing to Petitioner the subjects and objects of his investigation, nor confronting him with his discoveries, neither allowing petitioner to answer thereto, nor as his accuser, on that belated occasion, when the Chief Judge, at long last, opened himself to communication in a one-to-one meeting with Petitioner on January 16, 1976, in his courtroom.

12. The abdication of judicial function by the Chief Judge-Respondent, by his departure from his Bench, and his initial failure to issue an Order to Show Cause, as part of the constitutional due process, designed to limit his wholesale authority (of the General Court Rule, 5(d)) recently came in for severe criticism by this Court, by another Panel, that did not avoid Opinion: In Lewis v. State of New York, Chief Judge Kaufman, Judges MOORE and MANSFIELD, as reported in the New York Law Journal, front page, captioning "Admonitions" of the Second Circuit, declared: (October 29, 1976)

> "Great circumspection is required before terminating such actions, particularly in their embryonic stages. It is prudent for judges to avoid an inquisitorial role and not search out issues MORE APPROPRIATELY left to a motion by the opposing party.

* * * *

The report further states:

"The Court remanded for service of the defendants and for further proceedings".

And that is precisely what Petitioner sought of this Court, at least, where the Court Rule 5(d), in violation of its own built-in constitutional safeguards, was indiscriminately passed over by the Respondent Chief Judge, and now, with unequal application of the law, passed over by this Court, omitting an expected, much sought Opinion, -- symbol of independent review, as it were.

13. The same front page of the Law Journal, reports respondent"s

"EDELSTEIN'S ANNIVERSARY TO BE MARKED AT TWO EVENTS"

and refers, amongst others, to "WHITNEY NORTH SEYMOUR Sr. for the American Bar Association" as one of the Speakers to do him honor. The record herein, at Respondent's Addendum A-12,13, unfolded, that this same leader of the Bar of America, had disclosed, that on responsible search of this record, he could vouch, that Petitioner's state-disbarment order could soon be vacated, deservingly, for its unconstitutional quality; but, the Chief Judge-Respondent found this estimable Bar leader's opinion unnoteworthy, and that his finding of the disbarment decree as a disregard of all constitutional protections, in the State Courts, and so as

"shockingly incredible"

was "collateral", and of no interest to the Chief Judge, sitting at Court, on said January 16, 1976.

14. Petitioner, reverting to the present United States Attorney, and his sense of justice in the presence of his client's grave omissions, as berated in Appellant's Main Brief, on entry into this appeal, promptly engaged the United States Government in substantial expense of printing a large Addendum volume on his own, some 600 pages of record matter, which had been privately examined by the Chief Judge during his 15-month excursion from the Courtroom; but omitting therefrom, two most revealing documentary records; which would have, on their face, under the very controlling Rule, limiting the Chief Judge below, left him constrained to vacate his automatic order of September 25, 1974; the Appellant's Main Brief in the New York Court of Appeals of 1966, and the Department of Justice Report of September 9, 1968. The latter, already herein treated; the former disclosed the trivial and makeweight character of the underlying alleged charges, to provide the state's pretext for the abrupt state disbarment decree's entry, all squarely relevant under the sub-sections of General Court Rule 5(d), binding upon both the Court below and this Court. Respondent's Opinions had also omitted all reference to these two key constraining documents.

15. All these matters came to this Court, undisputed by the Chief Judge's counsel; and this Court did not ask to see them, or ask any questions of Petitioner, when he, so broadly, opened himself to questioning on any subject in the record, before this Court on the hearing date, October 22, 1976. On the other hand,

the United States Attorney, after printing the voluminous 600-page record, was relatively silent on the hearing; and neither in his Answering Brief nor at hearing, did he point to a single error on Petitioner's part in his extensive affidavits, communications by letter, and on the "hearing", had on January 16, 1976; when the Chief Judge, keeping all his gained information closely within his breast, repeatedly prodded the Petitioner to speak out, from all the record; nor at any time did the Chief Judge point out any error of recital of the State record.

16. Petitioner had been for almost a half-century, a member of the Bar of the Court below, without a blemish. The Chief Judge, receiving a certified copy of a state court disbarment judgment, more than nine years old, at Chambers below, and also on its face, blatantly lacking the recitals of due process, required of any final judgment, and which his Office under the governing Rule, might have discerned as a judicial counterfeit, seemed thereafter determined to vindicate his initial error; taking 15 months out in seeming effort to justify, instead of, at once, setting, in motion, the 30-day prescribed Order to Show Cause of the Rule, for the institution of a usual adversary proceeding.

17. Justice Frankfurter, speaking for the United States Supreme Court, declared that such a judgment, of any Court, is as worthless as "a letter to a newspaper", and as such, is entitled to no court's respect.

18. This Court's "affirmance", rather than remand for an impartial inquiry in the Court below, (If, at all, deemed necessary after the full inquiry by the United States Attorney of the Eastern District and the availability of that Report with his abandoned prosecution), can serve only to afflict the Courts with further needless labors. The situation bespeaks a callousness, from which this present eminent Panel of Circuit Judges should, in high conscience, be dissassociated, by simple remand.

19. There is a far greater, and more cogent ground for correction of this affirmance: The Opinion below is defiant of the final, highest authority of the United States Supreme Court, in passing over the most recent Opinions of that Court, the Armstrong v. Manzo and the Fuentes cases; and to that extent, --apart from the cruelty of an unusual nature, inflicted on one humble human, and member of the Bar,- a confusion of authority in guidance of the future Bar, and the Courts, under this Court's aegis of jurisdiction, would prevail, as results conflicting with the Supreme Court.

20. Petitioner has always declared in open Court that, so long as he continued, and continues, to defend the Bar against such assaults, as the predicate state Court judgment represents, (and in unison with the United States Attorney for the Eastern District of New York, when he struck his official blow at the unconstitutional callousness of the State Courts, on September 9, 1968, by his Official Report to the Chief Judge there, presiding), that

he wears such state judgment as a badge of honor, and that the shame thereof lies only on the heads of those who brought it about.

21. Petitioner in this relation, calls attention to the fact of record before this Court: That the aforesaid Trial Judge of the State Court, on the very eve of his overnight self-reversal aforedescribed, and his subsequent "command" for this Petitioner's disbarment, as set forth, had this to say of this Petitioner:

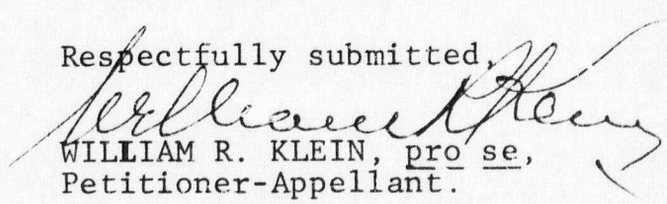
> "The Court: Mr. Klein, I find you a man of superb intellectual integrity.
>
> "Mr. Klein: Why do you say that, Your Honor?
>
> "The Court: Because, I find that when you are wrong, you quickly acknowledge it; and when you are right, you hang on, come hell or highwater (or substantially so).
>
> "Mr. Klein: In which case, I accept it as a compliment."

22. This eminent panel of Judges, Friendly, Hays and Mulligan, C.JJ., Petitioner had confidence, will profoundly appreciate this professional measure of dedication, and still harbors trust, that the members of this Panel, will mend the situation, produced by its "affirmance" without independent Opinion, concerning fundamental constitutional safeguards; particularly also safeguarded, apart from the General Court Rule 5(d) prevalent in Court below, and in that of the Eastern District, and probably prevalent throughout the Federal District Courts of the United States by special Congressional enactment, in the form of the Civil Rights Statute, Title 42, Section 1983, U.S.C.

23. The United States Supreme Court has repeatedly spoken out against infliction of undue jeopardies on a lawyer's right to practise, the sanctity and sacredness of protection of the lawyer's right, and especially, that he shall never suffer for his open defense of the ethics of the profession, and its ethical obligations vis-a-vis the same obligations of the judiciary in its relations to the administration of justice, and to attorneys, in their stand-up endeavors in such causes.

24. Petitioner, WHEREFORE, asks, minimally, that this Court remand the matter to the Court below, to make available the adversary hearing and trial, which the General Court Rule prescribes, and which has never yet been had or provided for, as specifically prescribed for such case; and, which The Chief Judge was obligated to duly hold, and set up, within thirty (30) days after his issuance of any automatic order, in discipline. Petitioner submits that the call-in of a local Bar Association was averted by the Chief Judge below, which the Rule prescribes, lest the Association, following the example of the United States Attorney for the Eastern District of New York, recoil from any adoption of the State disbarment order, as predicate for any prosecution of this Petitioner.

Respectfully submitted,



WILLIAM R. KLEIN, pro se,
Petitioner-Appellant.

November 12, 1976.

United States Court of Appeals

FOR THE

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 28th day of October one thousand nine hundred and seventy-six.

Present:

HON. HENRY J. FRIENDLY

HON. PAUL R. HAYS

HON. WILLIAM HUGHES MULLIGAN

Circuit Judges,

In the Matter of WILLIAM ROBERT KLEIN a/k/a WILLIAM R. KLEIN,

An Attorney,

WILLIAM ROBERT KLEIN,

Appellant,

76-6072

DAVID N. EDELSTEIN, Chief Judge, U.S.D.C., S.D.N.Y.,

Respondent.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed on the opinions of Chief Judge Edelstein dated February 2, 1976 and March 19, 1976.

76-6072

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

In the Matter of

WILLIAM ROBERT KLEIN a.k.a

WILLIAM R. KLEIN

An Attorney

WILLIAM ROBERT KLEIN,
Appellant

DAVID N.EDELSTEIN,
Chief Judge of the
UNITED STATES DISTRICT
COURT,Southern District
of New York
Respondent

AMENDMENT TO APPELLNB'S PETITION FOR REHEARING EN BANC

Petitioner hereby amends his Petition for re-hear ing,with leave of the Court,dated November 12,1976, to add thereto the following Point as follows,if the Court please:

1. That by reason of the 16-month delay of the Chief Judge in bringing to hearing and trial,prescribed by the controlling General Court Rule 5 d of the District Court,and in fact never yet having set down for any trial,and never having provided for designation of an adversary, and an Order to Show Cause for a joinder of Issue for trial,all and each as likewise prescribed by said Rule,being basic due process,

PROOF OF SERVICE

County o QUEENS:STATE OF NEW YO K::SS

William R.Klein, being duly sworn, deposes and says:

I am the appellant and upon the 11th day of November 1976, did serve a copy of the within Petition for rehear ing upon the office of the United States Attorney,Samuel Wilson Esq. (in Charge)

William R. Klein

Sworn to before me this
11 day of November,1976

Sara J. Rosenberg

SARA J. ROSENBERG
Notary Public, State of New York
No. 41-8851603 - Queens Co.
Term Expires March 30, 1978

where an automatic cancellation of appellant's membership of the District Court 's Bar, is sought to be vacated, originally entered without notice on September 25,1974, followed by the Chief Judge's reaffirmance of such conviction in February and March of 1976, with no hearing or trial, as by said Rule, having preceded same, another Constitutional infirmity exists.

2. That this Court, by one of its Panels, as reported in the New York Law Journal, dated November 18,1976 , that a conviction of one , arrived at by such delayed process, is vacatable as a violation of the Sixth Amendment of the Constitution, amongst other grounds, herein asserted: in denial of due process ,unequal application of the Laws, and denial of freedom of speech; the last involved in the procurement of the underlying State Court judgment of disbarment, as an alleged retaliatory step by the State Court, as already set forth, herein. That the case therein reported is U.S. v. Vispi, 76 -1250, decided November 15,1976; Mansfield, C.J. Anderson, C.J., with dissent by Mulligan C.J.

3. While in that case, "20 months" was not an "excessive " "delay", standing by itself, in the case at bar, the prescribed period for trial of issue joined herein, would have been shortly after thirty days from September 25, or from latest October 10,1974. The District Judge was criticised for the infliction upon the defendant of prejudice to his position as such in the circumstances; and parallel herewith, the Court, finding that period of "four years" between the discovery of the subject offense, while in the instant case, there was such a lapse of 9 years. While the District Judge took six months to file his decision, the present District Judge took some 17 months, after demand for instant hearing by appellant. In the instant case, not "lethargy " but deliberate undertaking of an extra-judicial, private investigation, entirely secretive in nature, by

the Chief Judge individually, as the record below reveals, going on from September 25 1974 to at least January 16, 1976.

4. Petitioner submits that the "constitutional magnitude", cited in the Vispi appeal, has no mitigative factors, as found in the opinions of the Vispi case, as prescribed by the Barker case, 407 U.S. 514 (1972) in the case at bar.

WHEREFORE petitioner now asks that this Court, sitting en banc view this new and cumulative demonstration of constitutional infirmities, first seemingly unreservedly acknowledged in the District Court Chief Judge's Opinion of February, 1976 and adopted by this Court's Panel, alternatively remand this matter to the District Court

(a) for vacature of the automatic order of cancellation of appellant's membership in the Bar of the District Court,

(b) for a hearing and trial, of an adversary nature, and wherein appellant's adversary would be a local Bar Association, as prescribed by the controlling General Court Rule 5

or (c) for both.

Respectfully submitted,

WILLIAM R. KLEIN,
Petitioner-appellant pro se

November 19, 1976